

Wage and Hour Division, Labor

§ 779.249

volume where it is necessary to determine monetary obligations to employees under the Act.

INTERSTATE INFLOW TEST UNDER PRIOR ACT

§ 779.246 Inflow test under section 3(s)(1) of the Act prior to 1966 amendments.

To come within the scope of section 3(s)(1) of the prior Act, the enterprise, in addition to the other conditions, must purchase or receive goods for resale that move or have moved across State lines (not in deliveries from the reselling establishment) which amount in total annual volume to \$250,000 or more. To meet this condition, it must be shown that (a) the enterprise purchases or receives goods for resale (§ 779.248), (b) that such goods move or have moved across State lines (§ 779.249), and (c) that such purchases and receipts amount in total annual volume to \$250,000 or more (§ 779.253). Enterprises which do not meet this test may be covered under section 3(s)(1) of the present Act, which contains no interstate inflow requirement.

§ 779.247 “Goods” defined.

The term “goods” as used in section 3(s) of the prior and amended Act is defined in section 3(i) of the Act. The statutory definition is quoted in § 779.14, and is discussed in detail in part 776 of this chapter.

§ 779.248 Purchase or receive “goods for resale.”

(a) Goods will be considered purchased or received “for resale” for purposes of the inflow test contained in section 3(s)(1) of the prior Act if they are purchased or received with the intention of being resold. This includes goods, such as stock in trade which is purchased or received by the enterprise for resale in the ordinary course of business. It does not include machinery, equipment, supplies, and other goods which the enterprise purchases to use in conducting its business. This is true even if such capital goods or other equipment, which the enterprise originally purchased for use in conducting its business, are at some later date actually resold. The distinction is

to be found in whether the goods are purchased or received by the enterprise with the intention of reselling them in the same form or after further processing or manufacturing, or whether they are purchased with the intent of being consumed or used by the enterprise itself in the performance of its activities.

(b) Goods, such as raw materials or ingredients, are considered purchased or received by the enterprise “for resale,” even if such goods are purchased or received for the purpose of being processed or used as parts or ingredients in the manufacture of other goods which the enterprise intends to sell. For example, where the enterprise purchases flour for use in baking bread or pastries for sale, the goods will be considered to have been purchased “for resale.” It is immaterial whether the goods will be resold by the enterprise at retail or at wholesale.

§ 779.249 Goods which move or have moved across State lines.

In order to be included in the annual dollar volume for purposes of this test, the goods which the enterprise purchases or receives for resale must be goods that “move or have moved across the State lines.” Goods which have not moved across State lines before they are resold by the enterprise will not be included. The movement to which the phrase “move or have moved” has reference is that movement which the goods follow in their journey to the enterprise or within the enterprise to the establishment which sells the goods. Thus, if goods have moved across State lines at some stage in the flow of trade before they are actually sold by the enterprise, they will be considered to have moved across State lines. It is not material that the goods may have “come to rest” at some time before they are purchased or received and sold by the enterprise; nor is it material that some time may have elapsed between the time the goods have moved across State lines and the time they are purchased or received and sold by the enterprise. It is sufficient if at any time such goods have moved across State lines in the ordinary course of trade before resale by the enterprise.